

Reply Deadline: June 13, 2018 at 5:00 p.m. (A.S.T.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO SALES TAX FINANCING
CORPORATION (“COFINA”),

Debtor.

PROMESA

Title III

No. 17 BK 3284-LTS

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (“Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF THE COMMONWEALTH OF
PUERTO RICO,

as agent of

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,

Plaintiff,

v.

BETTINA WHYTE,

as agent of

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE PUERTO RICO SALES TAX FINANCING
CORPORATION,

Defendant.

Adv. Proc. No. 17-257-LTS
in 17 BK 3283-LTS

**RESPONSE OF ASSURED GUARANTY CORP.
AND ASSURED GUARANTY MUNICIPAL CORP. TO
THE JOINT URGENT MOTION OF COMMONWEALTH AGENT AND
COFINA AGENT REQUESTING THAT COURT HOLD DECISION ON
MOTIONS FOR SUMMARY JUDGMENT IN ABEYANCE FOR 60-DAY PERIOD**

TO THE HONORABLE COURT:

Assured Guaranty Corp. and Assured Guaranty Municipal Corp. (collectively, “Assured”) hereby respond to the *Joint Urgent Motion of Commonwealth Agent and COFINA Agent Requesting That Court Hold Decision on Motions for Summary Judgment in Abeyance for 60-Day Period* (Adv. Proc. No. 17-257-LTS, ECF No. 484) (the “Motion”) filed by the Commonwealth Agent and COFINA Agent and states as follows:

1. Under the terms of the *Stipulation And Order Approving Procedure To Resolve Commonwealth-COFINA Dispute*, Case No. 17 BK 3283-LTS, ECF No. 996 (the “Stipulation”),² Assured and the Ad Hoc Group of General Obligation Bondholders (the “GO Group”) selected one of the two Commonwealth Creditor Representatives. Paragraph 4.i of the Stipulation provides:

[I]f the Commonwealth Creditor Representative selected by the [GO Group] and [Assured] objects to [a] settlement, the settlement shall not be filed with the Court unless and until Chief Bankruptcy Judge Barbara Houser, serving as Mediation Team Leader by order dated June 14, 2017 of U.S. District Judge Laura Taylor Swain, makes a determination that, under all the circumstances, it is appropriate for such settlement to be presented to the Court for approval.

ECF No. 996 at 7 (¶ 4.i). While Assured has been consulted to a limited extent, the Commonwealth Agent did not seek Assured’s input with respect to a number of important issues addressed by the Agents’ agreement in principle.

2. Assured does not oppose the Agents’ request in the Motion for a 60-day delay in the Court’s issuance of a decision on the summary judgment motions in the Commonwealth-

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in (i) the Motion, (ii) Term Sheet, or (iii) the Stipulation, as applicable.

COFINA Dispute, provided that the Agents use the requested 60-day abeyance period to (i) involve Assured and other GO Bond creditors in the negotiations and (ii) remedy a number of important defects in the preliminary Terms and Conditions of Agreement in Principle to Resolve Commonwealth-COFINA Dispute (the “Term Sheet”) disclosed by the Agents on June 7, 2018. *See Exhibit A to Joint Informative Motion of Commonwealth Agent and COFINA Agent Disclosing Agreement in Principle*, Adv. Proc. No. 17-257-LTS, ECF No. 486-1.

3. For example, the Term Sheet provides for the establishment of an escrow account to hold the Commonwealth’s share of PSTBA, with “such escrowed funds being allocated to holders of claims against the Commonwealth under a Commonwealth Title III plan of adjustment.” Adv. Proc. No. 17-257-LTS, ECF No. 486-1 at 1. The Term Sheet then goes on to provide that “the Commonwealth shall have recourse to the funds in escrow . . . to the extent necessary to pay for essential services, as determined by the Financial Oversight and Management Board for Puerto Rico.” *Id.* at 2. This provision raises several substantive and procedural problems, and, accordingly, requires additional discussion.

4. As another example, the Term Sheet in its present form contains various overly broad releases that—inadvertently or not—could be read to undermine the GO Bonds’ constitutional first-priority claim to all “available resources” (including PSTBA). *Id.* at 5-6. These releases need to be significantly narrowed and refined before they could be incorporated into a viable settlement or Title III plan.

5. These are just two of the important issues requiring further creditor involvement before a definitive agreement can be reached. There are several others.

6. Paragraph 4.f of the Stipulation expressly provides that “the Commonwealth Agent shall consult with . . . [Assured] . . . regarding the status of negotiations with respect to

settlement of the Commonwealth-COFINA dispute.” Case No. 17 BK 3283-LTS, ECF No. 996 at 6 (¶ 4.f). Paragraph 4.f also requires each Agent to “consult with the major creditor constituencies of the Debtor it represents.” *Id.* Accordingly, pursuant to paragraph 4.f of the Stipulation, Assured expects that both the Commonwealth Agent and the COFINA Agent will consult openly, honestly, and completely with Assured and the other major creditors as they work over the next 60 days towards a viable settlement that could have Assured’s support.

Dated: June 11, 2018
New York, New York

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CERTIFICATE OF SERVICE

I hereby certify that I filed this document electronically with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all parties of record in the captioned case. Further, I directed that the following counsel of record be served by U.S. Mail:

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At New York, New York, this 11th day of June, 2018.

By: /s/ Howard R. Hawkins, Jr.

Howard R. Hawkins, Jr.*

* Admitted *pro hac vice*